

Decision 15-05-013 May 7, 2015

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Talk America Services, LLC  
for a Certificate of Public Convenience and  
Necessity to Provide Resold Local Exchange  
and Interexchange Telecommunications  
Services in the State of California.

Application 14-10-001  
(Filed October 1, 2014)

**DECISION GRANTING WITHDRAWAL OF THE APPLICATION WITHOUT  
PREJUDICE AND GRANTING THE MOTION FOR LEAVE TO FILE  
CONFIDENTIAL MATERIAL UNDER SEAL**

**Summary**

This decision grants the motion filed by Talk America Services, LLC to withdraw its application filed on October 1, 2014, for a Certificate of Public Convenience and Necessity to provide resold local exchange and interexchange telecommunications services in California. This decision also grants Talk America Services, LLC's motions to file as confidential material under seal, Exhibits D and F of the application, and Exhibit D-2 of its response. Exhibits D, F, and D-2 contain Talk America Service, LLC's financial statements, projected number of customers, and certificate of deposit, respectively.

**1. Background**

On October 1, 2014, Talk America Services, LLC (Talk America or Applicant) filed Application 14-10-001 for authorization to obtain a Certificate of Public Convenience and Necessity (CPCN) to provide resold local exchange, resold interexchange and broadband telecommunications services in California in the service areas of AT&T California, Citizens Telecommunications Company

of California/Citizens Communications Company, SureWest Telephone/SureWest Communications and Verizon California, Inc.

Applicant is a subsidiary of Windstream Holdings, Inc. (Windstream) and the application was filed in connection with a transaction involving Windstream and certain of its indirect subsidiaries, whereby the Windstream Companies intended to transfer all of their residential local exchange and long distance customers to Applicant. Applicant's principal place of business is located at 4001 N. Rodney Parham Rd., Little Rock, Arkansas 72212.

The application was noticed on the daily calendar on October 2, 2014.

On October 30, 2014, a protest was filed by the Safety and Enforcement Division (SED) for violation of Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules).<sup>1</sup>

On December 19, 2014, the assigned Administrative Law Judge (ALJ) issued a ruling directing Talk America to file a response to certain information requests which Talk America filed on January 8, 2015. On January 22, 2015, the assigned ALJ directed Talk America to file a response and submit additional information relating to its financial status. A response was filed by Talk America on February 13, 2015.

On March 11, 2015, Talk America filed a motion to withdraw the application after careful consideration of the protest filed and re-evaluation of its operations in California. As of February 2014, the Windstream Companies had

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<sup>1</sup> See Rule 1.1 which states that "Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never mislead the Commission or its staff by an artifice or false statement of fact or law."

approximately 65 residential local and long distance customers in California, and as such, the revenues in the state derived from the provision of residential services are not sufficient to cover the costs of continuing forward with the application. Applicant and the Windstream Companies no longer intend to complete the transaction involving the transfer of residential local and long distance customers and those customers will instead remain with their existing Windstream company service providers.

On March 26, 2015, SED filed a response stating that they have no objection to the motion to withdraw by Talk America.

## **2. Jurisdiction**

Public Utilities Code Section 216(a) defines the term “public utility” to include a “telephone corporation,” which in turn is defined in Public Utilities Code Section 234(a) as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.”

In its application, Talk America proposed to provide wireline local telecommunications service. Talk America, therefore, is a telephone company and a public utility subject to our jurisdiction.

## **3. Request to File Under Seal**

Pursuant to Rule 11.4 of the Rules of Practice and Procedure (Rules) and General Order (GO) 66-C, Talk America filed two motions for leave to file confidential material under seal, Exhibits D and F of the application, and Exhibit D-2 of its response. Exhibits D, F, and D-2 contain Talk America’s financial statements, projected number of customers, and certificate of deposit, respectively. Talk America represents that the information is sensitive, and disclosure could place Talk America at an unfair business disadvantage. We have granted similar requests in the past and do so here.

#### **4. Categorization and Need for Hearings**

In Resolution ALJ 176-3344 dated October 16, 2014, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. A protest was filed by the SED on October 30, 2014, and a Prehearing Conference (PHC) was held on December 15, 2014. During the PHC, it was discussed that hearings will not be necessary. On March 11, 2015, Talk America filed a motion to withdraw the application. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

#### **5. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules, the otherwise applicable 30-day period for public review and comment is waived.

#### **6. Assignment of Proceeding**

Carla J. Peterman is the assigned Commissioner and Rafael L. Lirag is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on October 2, 2014.
2. Pub. Util. Code § 216(a) defines the term "public utility" to include a "telephone corporation."
3. Talk America proposed to provide wireline local telecommunications service.
4. On October 30, 2014, SED filed a protest to the application recommending the Commission to consider imposing penalties for alleged violation of Rule 1.1.

5. A PHC was held on December 15, 2014.

6. Pursuant to GO 66-C, Talk America filed a motion for leave to file confidential material under seal, Exhibits D and F of the application, containing its financial statements and projected number of customers.

7. On February 13, 2015, pursuant to Rule 11.4 and GO 66-C, Talk America filed a motion for leave to file confidential material under seal, Exhibit D-2 of its response, containing information about a certificate of deposit.

8. On March 11, 2015, Talk America filed a motion to withdraw the application. SED filed a response on March 26, 2015, and stated that it does not oppose the motion to withdraw.

### **Conclusions of Law**

1. Talk America is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).

2. Talk America's motion to withdraw the application without prejudice to refile at a later date should be granted.

3. Talk America's motions to file under seal Exhibits D and F of the application, and Exhibit D-2 of its response, containing its financial statements, projected number of customers, and certificate of deposit, respectively, should be granted for a period of three years.

### **O R D E R**

#### **IT IS ORDERED that:**

1. Talk America Services, LLC's motion to withdraw Application 14-10-001 without prejudice to refile at a later date is granted.

2. If Talk America Services, LLC files a subsequent application, it must reference this application.

3. Talk America Services, LLC's motions to file under seal Exhibits D and F of the application, and Exhibit D-2 of its response, containing its financial statements, projected number of customers, and certificate of deposit, respectively, are granted for a period of three years after the date of this order. During this three-year period, the above-named information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If Talk America Services, LLC believes that it is necessary for any of this information to remain under seal for longer than three years, Talk America Services, LLC may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

4. Application 14-10-001 is closed.

This order is effective today.

Dated May 7, 2015, at San Francisco, California.

MICHAEL PICKER  
President  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
CARLA J. PETERMAN  
LIANE M. RANDOLPH  
Commissioners